

REMARKS

Claims 1-11 and 46 have been cancelled without prejudice or disclaimer as to the subject matter recited therein. Applicants reserve the right to file a divisional patent application in regard to the subject matter of claims 1-11 and 46. Claims 12-45 are pending in the present application. Reconsideration is respectfully requested in light of the following remarks.

Section 121 Restriction:

In response to the Examiner's restriction requirement under 35 U.S.C. § 121, Applicants elect the invention of Group II (claims 12-45, as defined by the Examiner) without traverse.

Double Patenting Rejection:

The Examiner rejected claims 12-45 under the judiciary created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of U.S. Patent No. 6,993,770. Applicants traverse this rejection on the grounds that the Examiner has not established a *prima facie* obviousness-type double patenting. The Examiner states that "it is obvious that the pointer operations are encoded with handling the pointer operations since they synchronize modification of the reference counts." It is unclear how this statement by the Examiner addresses all the differences between claims 12-45 of the present application and claims 1-28 of U.S. Patent No. 6,993,770. Moreover, the Examiner's statement is not supported by any evidence of record and is therefore merely the Examiner's own opinion of what would be obvious. Such an unsupported conclusory statement is insufficient to establish a *prima facie* rejection. According to MPEP 804.II.B.1 the same "factual inquiries ... that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are employed when making an obviousness-type double patenting analysis."

Furthermore, the Examiner is ignoring differences between claims 12-45 of the present application and claims 1-28 of U.S. Patent No. 6,993,770. The Examiner states that the claims of the present application recite “nodes of a shared object including pointers encoded integrally with a counter wherein lock-free operations traverse the shared object nodes and read and atomically update the counter through the lock-free operations.” However, claim 12 of the present application actually recites:

12. A computer readable medium encoding of an implementation of a dynamically sizable shared object, the encoding comprising:

a definition of a node including a forward-direction pointer encoded integrally with a respective counter, the node instantiable as part of the shared object; and

a functional encoding of lock-free operations executable to traverse the shared object, each of the operations reading and atomically updating respective integrally encoded counters coincident with a related traversal, the functional encodings including both a forward-direction, counter-incrementing, pointer operation and a reverse-direction, counter-decrementing operation,

wherein corresponding executions of the forward-direction operation and the reverse-direction operation both atomically read and update the counter integrally encoded with the corresponding forward-direction pointer.

The Examiner asserts that the claims of U.S. Patent No. 6,993,770 “disclose a shared object having zero or more component objects such that access operations on the shared object employ one or more lock-free pointer operations that synchronize competing modifications of reference counts for the component objects.” Regardless of the accuracy of the Examiner’s characterization of the claims of U.S. Patent No. 6,993,770, the Examiner is clearly ignoring differences between the claims of the present application and the claims of U.S. Patent No. 6,993,770. According to MPEP 804.II.B.1, “the analysis employed in an obviousness-type double patenting determination parallels the guidelines for a 35 U.S.C. 103(a) rejection.” This section of the MPEP also states that the same “factual inquires ... that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are employed when making an obviousness-type double patenting analysis.” MPEP 804.II.B.1 also states that the Examiner should **list the differences** between each rejected claim and the claims of the

other patent/application, and **for each difference** the Examiner should give the reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim is an obvious variation of the invention defined in a claim of the other patent/application. The reasons should be supported by evidence of record just as is required for a rejection under 35 U.S.C. 103(a). The Examiner did not address **each specific difference of each claim** of the present application compared to the claims of U.S. Patent No. 6,993,770. Instead, the Examiner improperly lumped all the claims together and did not address each specific difference. Nor is the Examiner's conclusion of obviousness supported by any evidence of record. The Examiner clearly has not met the requirements stated in MPEP 804.II.B.1 to establish a *prima facie* obviousness-type double patenting rejection.

Accordingly, Applicant respectfully requests removal of the double patenting rejection of claims 12-45.

CONCLUSION

Applicants submit the application is in condition for allowance, and notice to that effect is respectfully requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/6000-33700/RCK.

Respectfully submitted,

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